

(2003) 10 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

Union of India

APPELLANT

Vs

PURSHOTTAM V. MOORJANI

RESPONDENT

Date of Decision : 08-10-2003

Acts Referred:

Citation : 2003 4 CPJ 749

Hon'ble Judges : M.S.Parikh , M.K.Joshi J.

Final Decision : Appeal partly allowed

Judgement

1. THIS appeal arises from order dated 29th April, 2000 rendered by the learned Baroda District Consumer Disputes Redressal Forum in Consumer Dispute Redressal Case No. 99/1996. Impugned order reads as under : "The applicant's complaint is partly allowed. The opponent Nos. 1 and 2 are ordered to pay Rs. 3,250/- together with interest at the rate of 12% p.a. with effect from the date of application i.e., 2.4.1996 till the realization of amount to the aggrieved consumer, within 30 days from the date of this order. The opponent to bear its own cost and the opponent Nos. 1 and 2 to pay Rs. 500/- to the aggrieved consumer as the cost of this proceeding."

2. IT was the case of the complainants before the learned Forum that the complainant No. 2 booked postal article containing two share certificates as described in the complaint along with transfer deeds for being sent to opponent No. 3, the concerned Company, by speed post on 15.6.1994. The cut-off date for receiving the transfer application was 20.6.1994. However, the postal article was delivered on 27.6.1994 resulting into the opponent No. 3 not transferring the shares in question to the name of the complainant No. 2. The shares in question were issued on preferential basis. Thus, non-transfer of the shares/non-issue of the preferential shares resulted in loss to the extent of Rs. 8,000/- to the complainant No. 2 who claimed the amount of loss along with interest in the sum of Rs. 1,440/-, legal expenses in the sum of Rs. 1,000/- and compensation for mental shock and agony in the sum of Rs. 10,000/-, along with cost of the complaint quantified at Rs. 500/-. The opponent Postal Department contended

that the complaint was not maintainable at law, that due to derailment on 14.6.1994 between Ankleshwar and Panoli Railway Stations the scheduled train carrying postal mail and speed post bag from Baroda to Bombay came to be cancelled. This resulted into postal mail service being delayed on account of accumulation of post at Bombay. Thus, it was beyond the control of opponents that the speed post article was not delivered in time and was delivered on 27.6.1994.

After considering the material placed on record learned Forum came to the conclusion that the complaint was maintainable at law inasmuch as opponent Postal Department was not entitled to benefit under Section 6 of the Indian Post Office Act and there was deficiency in service on the part of the opponent Postal Department as it failed to explain the delay.

3. LEARNED Forum considered the provision under Section 6 of the Indian Post Office Act, dealt with in Rules 50(c) and 81 of the Post Office Guide Part-1 as also decisions referred to by the parties. On merits learned Forum came to the conclusion that the derailment was on 14.6.1994, but the opponent Postal Department failed to produce certificate showing which of the trains carried postal articles and whether such trains were cancelled or not. According to the learned Forum there was no question of accumulation of incoming post at Bombay Railway Station. It was observed that if some trains were cancelled then the opponent Postal Department ought to have expected extra post by next incoming trains and necessary arrangement could have been made for distributing the post in time. With regard to loss learned Forum came to the conclusion that there was no material for holding the claim and, therefore, lumpsum amount as per the aforesaid order was awarded.

4. WE have heard the learned Advocate for the opponent Postal Department and learned Representative for the original complainant. WE find that there was delay in delivering the speed post articles and the opponent Postal Department failed to explain the delay inasmuch as cancellation of some trains on account of derailment on 14th June, 1994 will not take the matter any further for explaining delay. Learned Forum has rightly observed about specification of trains which came to be cancelled having not been made by the opponent Postal Department. Specification of the trains which carried the speed post articles has not been made and explanation regarding the time between acceptance of the articles for speed post delivery, actual delivery of the speed post and the date of derailment has not been given. However, the case is one of inadvertence and not of wilful default. Learned Advocate appearing for the opponent Postal Department would rely upon the decision of the National Commission in the case of *The Post Master, Imphal and Ors. v. Dr. Jamini Devi Sagolband*, reported in I (2000) CPJ 28 (NC). Provision under Section 6 of the Indian Post Office Act, 1898 came to be considered by the National Commission. National Commission has held that the Postal Authorities are exempted from liability for loss, mis-delivery, delay or damage under Section 6 of the aforesaid Act. It was observed that the

judgments of the Courts are based on two fundamental principles. One is the absolute protection afforded to the Government and also the Government servants who had not dealt with the postal articles themselves by Section 6. The other is the nature of postal service provided by the Government. The postal service provided by the Government extends throughout the territory of India. A vast network has been built by the Government to provide this service. The sender by handing over a packet at the Post Office for transmission to the addressee really avails of a service statutorily provided by the Government. The Government undertaking the postal service throughout India cannot bear the brunt of a very huge expenditure in the form of compensation to a very few of aggrieved persons in rendering a valuable public service to the people at large. National Commission, therefore, concluded that Section 6 provided clear immunity to the Postal Department as well as its officers except in case where it was established that there was wilful act or default or fraud on the part of the concerned personnel of the Postal Department. In our considered opinion the aforesaid decision of the National Commission deals with postal articles sent by registered post. However, rendition of service of speed post has been dealt with by the National Commission firstly in the case of Senior Superintendent of Post Offices, Trivandrum & Ors. v. Keltron Projectors Ltd., reported in III (2002) CPJ 429 (NC), holding that liability would be limited to the extent of Rs. 100/- under the Rules read with Section 6 of the Indian Post Offices Act. Two months thereafter the National Commission was required to consider the matter regarding rendition of service of speed post in the case of Head Post Master, Post Office Railway Road, Kurukshetra, Haryana & Ors. v. Vijay Rattan Agarwal & Ors., in Revision Petition No. 15/1997 and other matters decided on 18.9.2002. The National Commission had an occasion to consider delay of related speed post articles in the context of the provisions contained in the Circulars 66-B, 72, 83 and 83-A of the Indian Post Office Rules and Regulations 81, 82, 182, 183 and 184 of Post Office Guide Part-1 and Circulars fixing the norms. In that respect we would like to reproduce Rules 66(B) of the Statutory Rules of 1986 from the aforesaid citation : "66-B. Inland Speed Post Service.-Inland postal articles may be booked after obtaining receipts, therefore, at the places specified in column (1) of the Schedule below and at the Post Offices specified in the corresponding entries in column (2) of the said Schedule for delivery under the Inland Speed Post Service subject to the following conditions namely : (1) Inland Speed Post Service shall be available in respect of all classes of mails which can be sent by registered service; (2) an inland speed post fee of Rs. 10/- per article for distance upto 500 kms. and of Rs. 20/- per article, weighing upto 5 kgs. with an additional fee of Rs. 5/- for every additional 1/2 kg. or part thereof, for distance beyond 500 kms. in addition to the postage and registration fee and air surcharge, wherever applicable shall be prepaid by the sender in the same manner as is prescribed in the case of registered and parcel mail articles; (3) articles for booking under this service shall prominently bear on the front the superscription "Inland Speed Post" and shall also bear the name and address of the sender in addition to that of the addresses, including the PIN Codes, of the

Post Offices of delivery serving the addressee and the sender and their telephone numbers, if any; (4) complaints regarding any article booked under this service (including a demand for refund of fees in cases of non-delivery of articles within the stipulated time) may be preferred within three months from the date of booking of the article and shall inter alia contain the number of the article, the date of booking and the name of the office of booking; (5) there will be no delivery of these articles on Sundays and other holidays in the Post Offices concerned. Explanation.-For the purpose of this rule "Inland Speed Post Service" means the service which seeks to deliver postal articles within stipulated time, specified in respect of each city or town, as the case may be from time to time, by a special messenger or conveyance."

5. NATIONAL Commission considered the condition No. 2 of the aforesaid rule. It also considered the provision of Para-4 of the Rules which provided for insurance of postal articles. The Rules 72, 83 and 83(A) have been quoted for that purpose. Quoting Rules 182, 183 and 184, the NATIONAL Commission has observed that the Rules are statutory and the complaints regarding any article booked on the speed post including demand for refund of fees in case of non-delivery of articles within the stipulated time are to be preferred within three months from the date of booking of the articles and to the date of loss of speed post article, or contents thereof or damage to such contents and compensation payable would be the amount of composite speed post charges paid for or Rs. 1,000/- whichever is less. It has thus observed that the maximum compensation statutorily fixed is Rs. 1,000/- which can be granted when there is a loss of speed post articles or its contents or damage to its contents. It has observed under Rules 83(A) letter or parcel containing Government currency notes or bank notes or gold coins the sender would have to declare on the article the value of the contents at the time of dispatch. Bearing in mind this position of law the NATIONAL Commission held that the consumer would not get any amount of compensation except the amount equivalent to composite speed post charges.

6. IN our considered opinion the aforesaid decision of the National Commission in the case of Head Post Master, Post Office Railway Road, Kurukshetra, Haryana & Ors. v. Vijay Rattan Aggarwal & Ors., will apply to the present case and the complainant would be entitled to the amount of composite speed post charges which according to the learned Advocate for the opponent Postal Department would not exceed double the amount of the speed post charges. Complainant No. 2 has even failed to establish the loss as alleged in the complaint. Bearing in mind the aforesaid facts and legal position we pass following order : Impugned order dated 29th April, 2000 rendered by the learned Baroda District Consumer Disputes Redressal Forum in Consumer Dispute Redressal Case No. 99/1996 is hereby set aside. The opponent Postal Department will pay to the complainant No. 2 double the amount of the speed post charges paid by the complainant within four weeks from today. Further the opponent will pay cost quantified at Rs. 250/- to the complainant No. 2 and Rs. 250/- to the complainant No. 1 also within four weeks from today. This appeal is accordingly partly allowed with no

further order as to cost. Appeal partly allowed.